

SENATE TAXATION

EXHIBIT NO. 6

DATE 1.15.09

BILL NO. SB132



FINANCIAL-COMPLIANCE AUDIT

Department of Revenue

*For the Two Fiscal Years Ended
June 30, 2008*

DECEMBER 2008

Excess Vacation Leave

Due to a calculation error, seven department employees accumulated more vacation leave than state law permits.

Section 2-18-617(1), MCA, limits the amount of vacation leave an employee can accumulate and carry forward to twice the amount an employee earns in a calendar year. Vacation leave accumulated above this amount is considered excess and must be used by the employee within the first 90 days of the calendar year, unless an employee's written request for such leave is denied by the employing agency. If the employing agency denies the request, the excess vacation leave is not forfeited if used before the end of that calendar year. State law makes it the employing agency's responsibility to provide reasonable opportunity for an employee to use, rather than forfeit, excess vacation leave.

Department personnel have procedures to calculate the amount of excess vacation leave that needs to be taken or forfeited, but the procedures they followed for calculating excess vacation leave were flawed and the resources they used from the state's accounting system were designed for other purposes. The department's excess leave calculation understated the amount of excess vacation leave. As a result, seven employees had excess vacation leave balances at the end of the first pay period in calendar year 2008 that should have been forfeited December 31, 2007, but had not been forfeited as of May 27, 2008. These employees had accumulated excess vacation leave from prior years ranging from 3.62 to 79.82 hours, with a total value of \$9,013 at January 4, 2008. Not forfeiting the excess vacation leave hours in accordance with state law increases the department's liability for compensated absences.

RECOMMENDATION #5

We recommend the department revise procedures to ensure excess vacation leave is properly calculated and used by employees or forfeited in accordance with state law.

Tax Administration Issues

Section 15-1-201(1)(a), MCA, provides the department has general supervision over the administration of the assessment and tax laws of the state, except for gasoline and vehicle fuels taxes. During the course of our audit work, including follow-up on prior audit recommendations, we identified an area where we believe the department could improve

the administration of the tax laws, as discussed below. Our office also recommended during the performance audit "Improving Montana's Opencut Mine Permitting Process" (08P-04), that the Department of Environmental Quality coordinate data-sharing needs with the Department of Revenue to help ensure identification of all opencut mining operators required to pay the Resource Indemnity and Groundwater Assessment Tax.

Notification of Nonfilers and Delinquent Filers

The department does not have adequate procedures to notify the Secretary of State of all corporation license tax nonfilers and delinquent filers, as required by section 15-31-523, MCA.

If a corporate license tax is not paid or if a return is not filed 11 months after the date of delinquency, section 15-31-523, MCA, requires the department to transmit the name of the corporation to the Secretary of State so the public can be notified the corporate powers, rights, and privileges of domestic corporations are suspended and the rights of foreign corporations to do intrastate business in this state are forfeited. If any domestic corporation fails for five consecutive years to either file a return or to pay the corporation license tax, this statute requires the department to notify the corporation by mail that the corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within 60 days. If the corporation does not file all delinquent reports and pay all delinquent corporation license taxes, the statute requires the department to certify this fact to the Secretary of State, the corporation be dissolved, and the public notified of the corporation's dissolution.

As discussed in the prior audit, the department does not notify the Secretary of State when a corporation does not file or is delinquent in filing, unless department personnel know the corporation is currently operating in Montana and refuses to file a corporation license tax return. Department personnel do not check with the Secretary of State or its website to see whether the corporation is active. Department personnel indicated that the benefit of trying to comply with this statute is minimal, as past history has shown most corporations that do not file returns have already voluntarily dissolved or are no longer active. They also were concerned about the potential risk of suspending a corporation that had filed and the related cost of time to correct such an error. Department personnel estimated the cost to the department of complying with this law is about \$13,000 and the cost to the Secretary of State is about \$24,000 for computer system enhancements.



PERFORMANCE AUDIT

Improving Montana's Opencut Mine Permitting Process

*Department of
Environmental Quality*

JUNE 2008

Performance Audit
Division

OSP-04

Facilitating Collection Of The Resource Indemnity And Groundwater Assessment Tax

Our third objective was to determine whether controls are in place to assure opencut mining operators are paying the Resource Indemnity and Groundwater Assessment Tax (RIGWAT). Opencut mining operators are required to pay RIGWAT, which is a major revenue source for funding the Opencut Program. Section 15-38-102, MCA, states the legislature's policy for the Resource Indemnity Trust is to indemnify the state for the loss of long-term value resulting from the depletion of its mineral resource base and for environmental damage caused by mineral development. Operators are required to pay an annual tax of \$25, plus a 0.5 percent tax on the gross value of product mined in excess of \$5,000. The Department of Revenue (DOR) is responsible for collecting the tax. Revenues from RIGWAT account for 92 percent of the funding for the Opencut Mining Program.

Not All Permitted Opencut Mining Operators Pay RIGWAT

To accomplish our objective, we compared DOR information on companies paying RIGWAT with Department of Environmental Quality information on the number of operators with excavations for calendar year 2006. From our statistical sample of 42 files, we documented 19 private sector companies with active opencut mining permits. Of these, 16 operators reported excavating materials during 2006. However, when we compared this information with companies DOR reports paying RIGWAT, we noted differences. Our analysis indicates approximately 94 percent of sampled opencut operators are not paying RIGWAT. DOR reported collecting almost \$368,000 from opencut operators in 2006, but RIGWAT distributions to the program were approximately \$457,000. The difference is supplemented by RIGWAT collections from coal and other mining operations. Improving RIGWAT collections would result in a revenue increase to help fund agency operations and environmental cleanup activities. Increased revenues would help offset General Fund money appropriated for the program.

The Department Can Assist DOR With Identifying Opencut Mining Operators

While the Department of Environmental Quality is not responsible for collecting RIGWAT, it can assist with collections by providing DOR information about opencut mining operators who might be required to pay RIGWAT. The department requires operators to submit an annual report, which includes information about the number of opencut mines an operator has, as well as self-reported information about the volume of materials excavated during a calendar year. Providing annual report information to DOR would increase DOR's ability to identify opencut mining operators with producing mines. Additionally, section 15-38-105, MCA, requires operators to submit to DOR a

report of gross yield from a mine. The department should coordinate data-sharing with DOR to help identify opencut mining operators.

Coordination between agencies helps programs accomplish goals and objectives. Coordination between the department and DOR will enhance DOR's ability to collect RIGWAT. In turn, increased RIGWAT collections will increase deposits into the Reclamation and Development Account, which is the primary funding source for the Opencut Mining Program.

RECOMMENDATION #4

We recommend the Department of Environmental Quality coordinate data-sharing needs with the Department of Revenue to help ensure identification of all opencut mining operators required to pay the Resource Indemnity and Groundwater Assessment Tax.

Improving the Management Information System

Good management information is critical for an effective internal control system. The department collects and maintains some management information in a database; however, we identified several deficiencies. First, the department does not appear to collect complete management information to effectively manage the program. We documented a number of examples of management information not collected that could be useful for management purposes. Although section 82-4-432, MCA, requires complete permit applications be processed within 30 days, the program does not collect information on when applicants submit all information needed to determine whether a permit should be issued. Another example is the department does not track and monitor inspection information, although this is critical to assess compliance with state law.

An Improved Database Would Enhance Management Capabilities

Comprehensive management information systems are essential to understanding program strengths and areas for improvement. For example, the department reports a backlog of approximately 260 pending applications, although our analysis indicates there were 68 applications actually pending program action as of November 2007. From a management perspective, the difference between reported and actual pending permit applications could require significantly different resolution strategies. Resolving a backlog of 260 pending applications might require increasing FTE. However, resolving a backlog of 68 pending applications might only require adjusting how existing resources



Montana Department of ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

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June 6, 2008

Scott A. Seacat, Legislative Auditor
Legislative Audit Division
State Capitol
Helena, Montana 59620-1705

RECEIVED
JUN 06 2008
LEGISLATIVE AUDIT DIV.

**Re: Improving Montana's Opencut Mine Permitting Process
Legislative Audit Division Report No. 08P-04 Dated June 2008**

Dear Mr. Seacat:

By this letter, I am transmitting the department's formal response to recommendations presented in the Legislative Audit Division Report No. 08P-04 "Improving Montana's Opencut Mine Permitting Process." The department agrees with all seven recommendations and plans to contract with an outside consultant specializing in business process improvement to assist our efforts in implementing the recommendations. The enclosed responses present the department's position, contemplated corrective action, and anticipated timeframe for implementing each recommendation.

Proposed timeframes reflect the pressing need for existing program staff to continue processing permit applications and perform related site inspections and environmental assessments while efforts to improve permitting procedures are underway. Timeframes also reflect the ongoing expenditure of staff time in relation to litigation on several opencut permit applications and involvement in preparations for the upcoming legislative session.

I will be available for the June 20 meeting of the Legislative Audit Committee, as will appropriate staff from my office and the Permitting and Compliance Division.

I would like to personally thank your office and the audit staff assigned to this project for their dedication and professionalism throughout the course of this audit. Their findings and recommendations have provided a valuable insight into the department's management regarding permitting activities performed by the Opencut Mining Program. Their findings will help us improve the program's operations.

Sincerely,

Tom Livers
Deputy Director

c: Richard H. Oppen, DEQ Director
Judy Hanson, PCD Administrator
Neil Harrington, IEMB Chief
Chris Cronin, IEMB

Due to the heated public controversy and legal conflicts associated with a number of permit applications the department processed recently, we understand operators and the public are, or will be, pursuing legislative initiatives to amend the Opencut Mining Act. As a result, requirements of this law are expected to change during the 2009 session. Therefore, the department does not anticipate fully implementing the new opencut policies and procedures until after the session concludes. At that point, the department intends to finalize the revised permitting process and conduct an extensive outreach effort to inform operators and the public of the new program requirements. The department will also consider any necessary rule changes after the 2009 legislative session.

Recommendation #3 – We recommend the department establish formal policy and procedures, and propose administrative rules clarifying the role of program personnel and operators in the opencut mining permitting process.

The department concurs with this recommendation. The department agrees with the concept of establishing general policy for staff regarding the nature of and limits to assisting applicants with their mining permit applications. The policy is anticipated to take the general form of providing applicants with guidance on which application forms and materials are needed, answering applicants' questions, and recommending resources for applicants to use to prepare permit applications. The department will establish this policy and begin educating operators about it by July 1, 2009. Full implementation may require an extended transition period of working with operators.

The department does not anticipate the need for rules on this matter, at least initially, but will consider that option in the future if that appears to be warranted.

Recommendation #4 – We recommend the Department of Environmental Quality coordinate data-sharing needs with the Department of Revenue to help ensure identification of all opencut mining operators required to pay the Resource Indemnity and Groundwater Assessment Tax.

The department concurs with this recommendation. The department will consult with the Department of Revenue (DOR) in early FY09 and provide that agency with a list of permitted operators and any other readily available information that the department has in its possession and that is requested by DOR.

Recommendation #5 – We recommend the department identify information needs and develop a system capable of addressing Opencut Mining Program operational needs.